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Judicial Proceedings Committee



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THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

January 11<sup>th</sup>, 2024

The Maryland State Senate Judicial Proceedings Committee  
The Honorable William C. Smith, Jr.  
2 East Miller Senate Building  
Annapolis, Maryland 21401

**Re: Senate Bill 116: *Orphans' Court Judges – Restriction on Practicing Law***

Dear Chairman Smith and Members of the Committee,

Senate Bill 116 is identical to last year's Senate Bill 210, which passed out of the Judicial Proceedings Committee unanimously and then passed unanimously on the floor of the State Senate. Unfortunately, the bill got lost over in the House of Delegates. That is why SB 116 is before you today.

In Maryland, our Orphans Courts are the State's probate courts. They supervise the handling of estates and have jurisdiction over the guardianship of minors and their property. Under the Maryland Constitution, the voters of each county except Harford, Howard and Montgomery counties elect, for a term a four years, three Orphans Court Judges of their respective jurisdictions. In Harford, Howard and Montgomery Counties, the Orphans Courts are presided over by Circuit Court Judges.

In most of our counties, Orphans Court Judges only need to work part-time. So an attorney who gets elected to the Orphans Court is capable of continuing to practice law on those days that the attorney is not working in the Orphans Court. Orphans Court decisions frequently involve the interpretation and application of complicated statutory provisions found in the Estates and Trusts Article of the Maryland Code, and legal training is extremely helpful in these situations, so having at least one attorney on a county Orphans Court is highly recommended.

Currently, the Orphans Court Judges in Baltimore City and in Baltimore, Calvert and Prince George's Counties who are attorneys are allowed to continue to practice law part-time so long as that practice does not involve any subject matter that could be heard under the jurisdiction of the Orphans' Court, to prevent conflict of interest. But in all the other counties in the State, the current law provides that during the term of office of an Orphans Court Judge, the Judge cannot act as an attorney at law in a civil or criminal matter. In other words, in most Maryland counties, if a lawyer gets elected to a part-time Orphans Court Judgeship, which only pays a modest salary, the lawyer must cease practicing law during the lawyer's term of office.

For this reason, in most counties, attorneys are not willing to run to be part-time Orphans' Court Judges because they're required to give up their law practices.

In 2022, the *Task Force to Study the Orphans' Courts* was established. I was appointed as a member of the Task Force. One of the recommendations of the Task Force was to encourage more attorneys to run to be Orphans' Court Judges. Senate Bill 116 will allow attorneys to do so.

Senate Bill 116 creates a uniform statewide rule for attorneys who become Orphans' Court judges. Under Senate Bill 116, lawyers who are elected to Orphans Court will merely have to refrain from practicing estates and trusts and guardianship law. In all other respects, attorneys will be able to practice civil law, criminal law, family law, real estate law, commercial lending and all of the other legal specialties. This bill will thus effectuate the recommendation of the Task Force that the law be changed so as to encourage more attorneys to run to be Orphans Court judges.

I appreciate the Committee's consideration of Senate Bill 116 and will be happy to answer any questions the Committee may have.